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Speech of Hon. John Sherman
in reply to Mr. Stephens of
Georgia, 1856.



Class F685

Book .S55

SPEECH OF HON. JOHN SHERMAN,

OF OHIO,

*In reply to Mr. Stephens, of Georgia, and Review of Mr. Oliver's
Minority Report.*

BEFORE THE HOUSE OF REPRESENTATIVES, JULY 30, 1856.

The question being upon the adoption of the following resolution:

Resolved, That JOHN W. WHITFIELD is not entitled to a seat in this House as a Delegate from the Territory of Kansas—

Mr. SHERMAN. I do not propose, Mr. Speaker, to follow the gentleman from Georgia, [Mr. STEPHENS,] in rambling from the question before the House. His eminent ability, as well as my inexperience in this forum, deter me from such an attempt. He has discussed topics to which I will not refer—such as the Fugitive Slave Law, and the rights of negroes in the Northern and Southern States.

The controversy now before the House turns upon the question whether or not the two bodies recently assembled at Shawnee Mission was a valid Legislative Assembly of the Territory of Kansas, elected in accordance with its organic law. If so, then Gen. Whitfield is entitled to retain his seat here, and I would not vote to deprive him of it.

It is true, there are other questions involved. If the alleged Legislative Assembly was valid, the election law passed by it contained unconstitutional tests and qualifications, which were intended to exclude and would have excluded a large number, if not a majority, of the legal voters from the polls. From the testimony of eighteen witnesses, taken before the Kansas Investigating Committee, it appears that the same organized invasion from Missouri which controlled the previous elections in the Territory, participated in the one of October last, but to a less extent. In eight election precincts, 852 illegal votes were cast. But one party voted, and in most cases the election law was utterly disregarded. The dollar tax and test oaths were only designed to exclude a particular class of voters; and this being done by other means, they were generally disregarded. How far these facts affect the election, I shall not stop to inquire. If the Legislative Assembly was itself a usurpation, it is scarcely necessary to inquire how far its edicts were observed.

But the gentleman from Georgia claims that Congress has no power to make this inquiry. There he and I entirely differ. I claim that this is a question to be determined by Congress alone. The Territorial Government of Kansas is a mere creation of Congress. It owes its organization, its existence, and its vitality, entirely to the act of May 30, 1854, known as the Kansas-Nebraska Act. Its officers are dependent upon Congress for their salaries if paid at all, they

are to be paid by your appropriations. All the powers of the Territorial Government are granted, limited, and distributed, by Congress. The very existence of Kansas as a Territory proclaims its dependence upon Congress, and it is only when its people take steps to form a State Government, that they exercise the least independent political power. It is Congress that divides its Government into three departments—the Executive, the Judicial, and the Legislative. Two of these departments are intrusted to the President; he appoints the Governor and the Judges. They are mere tenants at his will—he may remove them at his pleasure. It is no figure of speech to say he is Governor and sole Judge in the Territory; for if his deputies violate his imperial will in the least, their fate is sealed. He is responsible for their conduct, and should be held to a strict account for all their official acts.

The only political power conferred by Congress upon the people of the Territory was the right to select a Legislative Assembly, to be composed of two Houses—a Council and a House of Representatives—to be elected at such time and places as the Governor should appoint. This Legislative Assembly have power to pass laws, under certain restrictions, for the government of the Territory. The right to vote at this election was expressly confined to "free white males, above the age of 21 years, who are actual residents of the Territory. In other words, the actual settlers were invested with limited legislative powers, sufficient for their government and protection while inhabitants of the Territory. This limited power was baptized with the pleasing name of "popular sovereignty;" and was declared to be the panacea for all sectional controversy. The people of the Territory were assured, by an express Congressional declaration, that they were perfectly free to form and regulate their domestic institutions in their own way.

We are now told, that previous to and on the day of election, an armed invading force from the State of Missouri, of near 5,000 men, marched into the Territory in military array; that this force was divided so as to extend to every Council district, and every Representative district but one; that these invaders, by fraud and force, controlled the elections, and deprived the actual settlers of the Territory of their only political right. This is a question of fact. To enable you to determine it justly and fairly, you have sent a commission of your own members into the Territory, have caused the testimony of

323 witnesses to be taken, and you have now before you all the official documents relating to this election.

Mr. Speaker, so far as the facts of this controversy are concerned, I do not wish to add anything to the report of the Committee. To that part of it which relates to the election of the 30th of March, and which affects the question now before this House, I invite the severest scrutiny. It is contained from page 9 to page 36 of the report. It is a bare statement of the result of the testimony, with dates, names, and references. Every material fact there stated is sworn to by one or more credible witnesses, belonging to different parties. They corroborate each other in most of the essential facts; and where they differ, it is easy, by a comparison and review of the whole testimony, to ascertain the truth. I must say that, in my brief practice at the bar, I never met with or read of a case, involving complicated facts, where there was a more "general consistency, with immaterial variances," in the testimony of witnesses, than in this investigation. This may be accounted for from the public or historical character of the facts sworn to, their publicity being a guard against perjury. And I should not have trespassed upon the time of the House, but for the counter statement made by the minority of the Committee. To this I ask your attention.

Before doing so, it is but proper for me to say, and I do so with great pleasure, that my colleague, [Mr. OLIVER, of Missouri,] who made that statement, was required to perform his duty under circumstances of great embarrassment. His conduct, and that of many of his constituents and personal friends, was involved in the inquiry; and while it was his duty to aid in eliciting the truth, it was but natural for him, and his sense of duty and honor would require him, to excuse and palliate their acts as far as possible. This embarrassment must have been increased by the overwhelming character of the testimony, which left him a cause and friends to defend, without facts upon which to place their defence.

The report of the minority covers 41 printed pages; nine of the pages are devoted to the election of 30th March. Three of these contain nothing but extracts from *ex parte* depositions, not taken before the Committee, not taken before my colleague, but taken after we left Missouri; and the first notice we had of them was the publication of the report.

Mr. OLIVER. I would ask the gentleman whether the majority of the Committee admitted and put on record no testimony except that taken before the Committee.

Mr. SHERMAN. I do not recollect any case, except the testimony of H. Miles Moore.

Mr. OLIVER. Do you recollect the testimony of Charles Robinson?

Mr. SHERMAN. The statement made by Moore, while he was confined, was attached to the testimony, and shows under what circumstances it was taken. The rebutting statement of Charles Robinson was taken when he was confined in prison, and was sworn to before a notary public. A Wyandot by the name of Walker had sworn to his alleged declarations,

and, he being a prisoner at Lecompton, we gave him an opportunity to explain.

Mr. OLIVER. And H. Miles Moore—his depositions were also put on record.

Mr. SHERMAN. I have already stated that. I say again, that of the nine pages relating to the election of 30th March, three are mere extracts of *ex parte* testimony. The residue of my colleague's statement, not embraced in the nine pages, relate to other matters. It is made up chiefly of official documents which had been published before by the House—such as the correspondence between Shannon and the President, *ex parte* statements which I never saw until they were published, and overruled testimony reduced to writing in form of affidavits. The *ex parte* testimony is of three classes. The first class is the letters of Governor Reeder to his friend, Mr. G. R. Lowry. Now I will state the circumstances connected with these letters. Mr. Lowry, without any process against him, was driven from the Territory. Governor Reeder was also driven from the Territory, and, as I believe, for the mere purpose of depriving the Committee of the benefit of his local information and aid. They left their private papers and clothes in their trunks in the town of Lawrence, each having his own key. When that town was sacked, their trunks, in which were these papers, were broken open, and the letters abstracted. A lawyer from Atchison, fresh from the sacked town, brought these stolen letters to the Committee, but the Committee refused to receive or publish them. We refused by so doing to share the ignominy of a shameless breach of the law, which in every civilized country respects the confidence of private friendship. They are now a part of the minority report. It is not for me to make exception to the gentleman's publishing them, if he chooses so to do; but they were rejected by the Committee, on the ground that they were improperly obtained. And I appeal to every gentleman of the House, whether the circumstances under which these letters were obtained would have justified the Committee in publishing them.

Another class of these *ex parte* statements, embodied in the statement of the minority, consists of affidavits taken after we left the Territory, and after we left the State of Missouri. We never saw them until they were produced here, as printed and engraved on the report. They were taken when my colleague was not present, and they appear to have been sworn to before a Justice of the Peace, in Missouri. They are to be found from pages 1136 to 1206 of the testimony; but they are properly no part of it, and, as I will show hereafter, some of them are entirely false.

A third class of the *ex parte* testimony relates to the sufficiency of the houses in Pawnee to accommodate the Legislature. In the early part of our investigation, Governor Reeder proposed to prove that there was sufficient house room in Pawnee to accommodate the Legislature, and that the excuse given by it for its removal was a mere pretext. The Committee, however, rejected the evidence, as totally irrelevant and incompetent, on the ground that it did not affect any question before them; and in this decision our colleague concurred. And yet, after we left the Territory, we find that *ex parte* testimony on the subject

has been taken by the sitting Delegate, and engrafted on the report. This is manifestly unjust to Governor Reeder, and was unwarranted, and cannot be justified.

There is still another class of *ex parte* testimony embodied in the statement of the minority, and dwelt upon at great length. It is that in regard to the murder of Doyle and others. Now, sir, the Committee unanimously excluded all evidence as to events which took place after the 19th of March, 1856, the date of our appointment; and the testimony in regard to these murders was excluded with all the rest.

MR. OLIVER. What do I understand the gentleman to say in that regard?

MR. SHERMAN. That all evidence as to events after the 19th March, 1856, was excluded by the general consent of the Committee.

MR. OLIVER. Will the gentleman allow me here to make a statement to the House?

MR. SHERMAN. I would prefer that my colleague would wait until I get through, when he will have ample time.

MR. OLIVER. Allow me two minutes to make a correction?

MR. SHERMAN. I will state what I know the gentleman wishes to refer to; that a witness of the name of Rev. Pardee Butler was examined, and testified as to events that occurred before the 19th of March, and by inadvertence he also testified as to one event that occurred after that date. No objection was made, and the attention of the Committee was not called to it. On that basis, my colleague claimed to have a right to put on record evidence in regard to the murder of Doyle. But the Committee adhered to the rule, and excluded all of it. This was manifestly just, and was concurred in by Governor King, the counsel of the sitting Delegate. Under this rule, the robbing and murder of Free State men, the sacking of Lawrence and Ossawatimie, and all the multitude of crimes committed upon that class of settlers, since our appointment, was excluded, and therefore it was not right to spread upon our records an act of retaliation which no man attempts to justify or defend.

I have thus been particular in calling the attention of the House to those parts of this counter statement which are not founded upon evidence taken before the Committee. The material facts in the statement of the minority are contained in pages from 72 to 84; and these I propose to examine in detail, because it is the only part that relates to the matter now before the House. The Committee in the report allege—

"Every election has been controlled, not by the actual settlers, but by citizens of Missouri; and, as a consequence, every officer in the Territory, from constables to Legislators, except those appointed by the President, owe their positions to non-resident voters. None have been elected by the settlers, and your Committee have been unable to find that any political power whatever, however unimportant, has been exercised by the people of the Territory."

Now, Mr. Speaker, there has been but one exception taken, by either my colleague or the gentleman from Georgia, [Mr. STEPHENS,] to this broad and sweeping declaration; and that exception is worse than the rule. It is founded upon the statement of the report, that General Whitfield did receive a plurality of the legal votes, at the election for Delegate, in November, 1854. The

evidence taken before the Committee clearly shows that, out of the 2,842 votes cast, only 1,114 were legal votes; 1,729 of the votes cast for Mr. Whitfield were by residents of Missouri. This fact is not controverted by the gentleman from Georgia; and yet the gentleman asks what evidence there is that fraud or force was used in the election? Yes, sir, the evidence is full and ample. No man who reads it can question it. It is true that General Whitfield received a plurality of all the votes cast, and the reasons have been stated; but what would have been the result of that election, if the Missourians had not gone into the Territory, no man can tell. I say that the first election in the Territory, in 1854, now referred to as an exception to the general rule of force and fraud, will form a dark mark in the history of that Territory; and is the more to be condemned as the first startling event in the practical working of squatter sovereignty, as administered in Kansas.

Again: The Committee allege that "companies of men from Missouri" were arranged in regular parties, and sent into every Council district in the Territory, and into every Representative district but one. The numbers were so distributed as to control the elections in each district." Does my colleague deny the facts? Not at all. But he seeks to create the impression that this statement is not correct, by showing that in five election districts there was no invasion. Admit it, and yet every word stated by the Committee is true. Three of these election districts were attached to other election districts, to form Council and Representative districts. The invasion extended to the election districts to which they were attached, thus controlling their vote. Thus, the 8th election district was attached to the 7th, in which 209 illegal votes were cast. The 12th election district was attached to the 11th, in which 321 illegal votes were cast; and the 17th was attached to the 4th, in which 63 illegal votes were cast. The 9th and 10th election districts were attached, and formed the only Representative district to which the invasion did not extend. The formation of these districts was well known to my colleague; and yet, by not observing them, he seeks to make a contradiction where none exists, and in doing so very modestly says: "These contradictory statements, to the undersigned, seem wholly inexplicable, and he leaves them for the majority to reconcile or explain as best they may." Sir, the fact thus made prominent by my colleague, that this invading force was so marshalled as to control all the members of the Assembly but one, and yet so as not to extend into five election districts, throws a flood of light upon the manner in which it was conducted, and the design of those who moved it.

It shows one feature which is always taken into consideration in determining the degree of crime. It shows deliberation, premeditation, and, to use a technical phrase, when applied to criminal transactions, malice aforethought. These districts were carefully coned over. No voting force was wasted, no man was sent into a district where his vote was not wanted to control the election; and so completely was the plan carried into execution, that while, out of the 18 election districts, there was an invasion into

only 13 of them, yet in every Council district, and in every Representative district except one, the movements of Missourians extended. Is this denied? If so, I would like to have my friend from Missouri state into which Council district, and into which Representative district, except the one I have named, the invasion did not extend.

Mr. STANTON. How did the Committee arrive at the number of legal and illegal voters?

Mr. SHERMAN. I will come to that presently. Now, sir, it is claimed by my colleague that the Free State candidates were not voted for by a majority of the actual settlers of the Territory. A table has been prepared by him, to show that only about 800 votes were cast by the Free State men for Free State candidates. But, sir, while this is true, it is also true that the Pro-Slavery candidates did not receive the votes of one-fourth of the legal voters of the Territory. If it is true that the Free State candidates received only 783 votes, it is equally true that the Pro-Slavery candidates received only 634 legal votes.

Here is a table showing the number of legal votes cast in each Representative and Council district:

REPRESENTATIVE DISTRICTS.

Number Representative district.	Number of legal voters.	Number of votes for Free State ticket.	Total legal votes for Pro-Slavery candidates.	Number of Representatives.
1	74	19	-	1
2	382	253	-	3
3	25	12	-	2
4	32	4	-	1
5	62	49	-	1
6	100	35	-	2
7	224	152	-	4
8	156	120	-	1
9	53	26	-	1
10	12	-	-	1
11	100	54	-	2
12	117	-	-	2
13	80	-	-	2
14	150	59	-	2
1,407		783	624	

COUNCIL DISTRICTS.

Number Council district.	Number of legal voters.	Number of votes for Free State ticket.	Total legal votes for Pro-Slavery candidates.	Number Councilmen.
1	306	273	-	2
2	25	12	-	1
3	94	44	-	1
4	223	158	-	2
5	100	-	-	1
6	195	140	-	1
7	100	-	-	1
8	117	68	-	1
9	80	-	-	1
10	162	66	-	2
1,404		761	643	

But it is also true that a majority of the legal voters of the Territory were kept away from the polls, and did not vote at all.

The testimony shows, beyond cavil, that a majority of the people did not vote at all, because to get to the polls they had to encounter an armed force of Missourians, and they could not in some cases vote without fears of personal violence; and the record shows, that out of more than 2,900 legal voters in the Territory, only 1,410 voted.

My colleague [Mr. STANTON] asks how we arrived at the number of legal and illegal voters. Sir, we did not rely upon any general statement made by witnesses, but made a careful analysis of the records themselves. The census returns give the names of all the legal voters in the Territory, one month prior to the election; and the poll-books of the electors give the names of all those who voted. We compared these, name by name, and thus we ascertained the names and number of those settlers who voted.

From this comparison we found, that of 2,903 legal voters upon the census list, only 898 voted. It appeared, however, that many persons arrived in the Territory after the taking of the census. We therefore examined such witnesses, in every election district, as were best acquainted with the settlers in their districts. They carefully examined the poll-books, and testified who of those named on the poll-books were residents on the day of election; and testimony of this character was taken on both sides. The result was, that out of 6,300 men who voted, only 1,410 were inhabitants of the Territory. Neither the mode of examination nor the results of the comparison are called in question by my colleague.

To weaken the force of the conclusions of the Committee, the gentleman from Georgia [Mr. STEPHENS] resorts to a novel mode of argument. It is this: By examining the census rolls, he finds that of the 2,903 legal voters in the Territory, about 1,600 emigrated from the slave States. He then assumes the position, that all these are Pro-Slavery men, and that all were born and bred in the Southern States. Neither of these assumptions is true. Very many who emigrated from Missouri into the Territory are natives of the Northern States. These are included in the 1,600. Very many men born and bred in the South, now residing in the Territory, are the most zealous Free State men. This is the case with whole neighborhoods. Thus, in the fifth district, the most populous in the Territory, a very large majority of the settlers, as shown by the gentleman's table, emigrated from Southern States; and in this district it is proven, and admitted by my colleague, that a majority of the actual settlers are for a free State, and so voted. In the only Representative district to which the invasion did not extend, and which elected a Free State man, a majority are from the Southern States.

The gentleman from Georgia, [Mr. STEPHENS,] agreeing in this with the statement of my colleague, says that there was no force used in this election—that no fights occurred. Admit the statement to be true, and why was there no actual force used? And why were there no fights? I call the attention of the House to the testimony of Mr. Chapman upon this point, on page 144. He was elected a Councilman from the Lawrence

district, and was a Pro-Slavery man. Here is what he says :

"We crossed the ravine, and came very near the house of the election. Some gentleman halloed to me; I went back, and we got into conversation about the matter. He asked me if I thought there was any prospect of difficulty here? I told him I thought not. He said he was in hopes there would not be. I told him, if there were citizens enough in the place to give them a fair fight, they would do it. He thought there would be no use in doing that, and invited me to go down a short distance with him. We went to a wagon, and he lifted up a cloth and some blankets, and remarked to me that there was a couple of 'bull-dogs' they had, loaded with musket-balls. They were all covered up in the hay, with the exception of the muzzles of them. They were a couple of brass cannon. I then left there, and went up to the house where the election was held. I suppose I was voted for by them for member of Council on that day."

Others tell us, that such was the feeling among the citizens there, that if there had been a fair chance, there would have been a fight. There was no equality of forces; there were 700 men, armed with rifles and cannon, to 200 or 300 unarmed and scattered settlers.

I have heard the inquiry here, Why did not the citizens repel the invaders? It was eloquently put, some months since, by my friend from Maryland, [Mr. Davis.] The answer is easy. It is furnished by the evidence. But, sir, actual violence was used; men, armed and organized, assaulted citizens, and drove them from the polls. In this very district, three men were thus prevented from voting.

Mr. STEPHENS. I should like the gentleman to read that part of the evidence which shows that they were driven from the polls. The testimony on the part of the contestant is, that there was not a man there that day prevented from voting. The testimony of Mr. Ladd is, that Mr. Stearns was driven away, not to prevent him from voting, but for another cause. The driving off of Willis and Bond had nothing to do with voting.

Mr. SHERMAN. In reply, I will only refer to the testimony of witnesses, to show that Stearns, Bond, and Willis, were driven away because they were charged with being abolitionists. And here I may remark, that every man in the Territory was called an abolitionist, who was in favor of making Kansas a free State. These men were driven from the polls; one was shot at with a pistol, and only escaped by jumping down the river bank.

Mr. STEPHENS again interrupted.

Mr. SHERMAN declined to yield the floor.

I pass to the second district. What a spectacle was there presented! Have you read the plain, unvarnished testimony of several witnesses, about Jones, now sheriff, under appointment of the Legislature, going there with his men, and driving the judges from the polls? When he had, after giving them five minutes in which to resign or die, driven off two of them, he went with some of his men in pursuit. He caught Umberger, and brought him to the polls. He then by force took Judge Wakefield, an old man, from his friends, and compelled him to get up in the presence of a drunken rabble, and make a speech.

Mr. STEPHENS. Will the gentleman let me put him right?

Mr. SHERMAN. I cannot yield. The gentle-

man has had his nour without interruption, and I prefer to go on.

The testimony on the subject is clear. It is given by Burson, Wakefield, and several others, who were witnesses.

Mr. STEPHENS. And denied by the judge of the election.

Mr. SHERMAN. That is one of the *ex parte* affidavits which I will refer to hereafter. Its material statements are entirely overthrown.

In regard to the third district, I will call the gentleman's attention to the case of Charles Jordan. He is a native of Virginia, and a fine specimen of the hardy Western pioneer. His head is blanched with seventy winters. He has lived almost all his life in slave States. Born in Virginia, he first emigrated to Kentucky, passing through Illinois and Missouri. From there he went to and settled in the third district of Kansas. He went, like a patriarch of old, with his family gathered around him. He says:

"In the morning, between nine and ten o'clock, I arrived at Mr. Stinson's, where the election was held. Three others were in my company, and as we were getting over the stile, four young men, all armed, approached us. The front one accosted me, as I stepped over the fence, about in this language: 'You are well how am I, God damn you.' or 'by God,' I am not certain which. As regards the position of his arms, there was a pistol revolver shoved down in his boot, a bowie-knife by his side, and a large club in his hand. I passed him, without heeding or noticing him. * * * The flag was floating over us, just about where we were standing. I told them I had defended my country; that that was our true flag, the stars and stripes; and under that flag I never intend to vote, while it floats over a seditious mob. * * * There was a gentleman they called 'Texas' ascended the stile, and proclaimed that they wanted everybody to come forward and vote; that it was everybody's privilege to vote, and he wanted both parties to come, and have the thing fairly tested. He concluded with instructions to the Pro-Slavery party. He told them when they voted not to leave the ground, but to stay there till the polls were closed, or the Abolitionists would flock in, overpower them, and they would lose all their trouble. He said he had come further, perhaps, than the rest, and had undergone more than the rest, as he had been four and a half days on the road. I never learned where he came from. I then advised my party to leave, which we did, I think, pretty generally. I then came home. * * * I did not vote, because I saw we were entirely overpowered by the numbers from abroad. I was a Free State man. I saw we had to be perfectly silent on all political matters, or we would get into difficulty. When I referred to the flag, an old gentleman asked me if I had seen any violence; I said I had not, but had seen some menacing, with insults added to injury, and would not vote."

Here is the case of a man who, from his age, his service to his country, and his character, should be respected in every community—yet he was driven from the polls—not, it is true, by actual violence, but by insult and menace from an armed force, without being permitted to exercise his right to vote. There was a majority of Free State men in that district, but their candidate was induced to and did withdraw, because the numbers present from Missouri rendered it idle to make a contest.

Mr. STEPHENS. In the third district, the testimony shows there were no Free State candidates in the field.

A MEMBER. The candidate withdrew.

Mr. STEPHENS. There were not men enough to agree to run a ticket; yet it is said he was driven from the polls.

Mr. SHERMAN. That district embraces the town of Topeka, one of the largest towns in the Territory, and entirely Free State.

There can be no doubt of the position of affairs in that district. Mr. Halliday was the candidate. He withdrew, and the testimony is conclusive, that he withdrew for the reason I have stated.

I will not consume my time by going through all the other districts. I say that, from the armed forces around the polls, the Free State men were either prevented from voting, or their candidates were withdrawn. Such was the case in the 4th, 7th, 13th, 14th, 15th, and the 16th districts.

Now, sir, I desire to examine the statements in the minority report, in regard to two or three election districts. As to the first district, my colleague seems to rely upon the *ex parte* statement of Salters. I ask, if there is any gentleman here who has not heard of this worthy chief deputy of Sheriff Jones, and the man who signed the passes for free white men, some of which have been published? His *ex parte* affidavit was taken after we left the Territory. He states that—

"There were about 200 Free State resident voters in that district, and there were from 300 to 400 Pro-Slavery voters at the polls that day, whom I knew to be residents of that district, and a great many of them voted in my presence, and the others told me they had voted."

This statement is shown to be false by many witnesses. The census shows that there were 369 voters, and that only 177 voted. Their names are given on page 121 of the report. The highest legal Pro-Slavery vote ever cast in that district was in November, 1854, when Whitfield received 46 votes, out of 300 votes cast, all of which were legal; and at Lawrence, in October, 1855, Whitfield received 42 votes. Now, in the face of these facts, and contradicted by many witnesses, stands Salters. I pass him by without further comment.

Mr. STEPHENS. The testimony taken by the Committee is contrary to that.

Mr. SHERMAN. The testimony which the gentleman comments upon in the second district is that of Parris Ellison, a man who, acting as judge of the election on the 30th of March, seized the ballot-box, after his associates had been driven away, swung it around his head, and ran out into the crowd, and hurrahed for Missouri. He was one of the men upon the jury which indicted Charles Robinson for treason, and his testimony was taken after we left, and is part of the batch of *ex parte* statements to which I have referred.

In regard to each of the other districts, my colleague satisfies himself with a statement like this:

"Third District.—The testimony in relation to this district is, that the Pro-Slavery party had a majority among the actual settlers of the district."

It is not alleged that there was a majority of actual residents who voted the Pro-Slavery ticket, but that the Pro-Slavery men had a majority in the district. How can any man say, why. Where is the evidence of it. If that was so, why this invasion, why march 4,900 men two hundred miles into these various districts? Why this armed foray, if they had a Pro-Slavery majority? Why endanger the perpetuity of our institutions, by thus striking down, for the first time, the right of the people to elect their own representatives? I should like to have that question answered,

and, until it is, I will not waste further time upon this branch of the inquiry. After one has read the testimony, how strange is the conclusion of my colleague, contained in this summary allegation, that the Free State party was in the minority in the Territory at the March election, in 1855, for members of the Legislature; and that that election was not carried, either by force, violence, or non-residents, but that a majority of the Legislature was duly elected, as certified to by the Governor, and was properly constituted as a law-making body.

Why, sir, the bare admissions made in the minority report contradict this conclusion. The action of Gov. Reeder is not controverted. It is not claimed but that he did right in setting aside the election in the 1st, 2d, 3d, 4th, 7th, 11th, and 16th districts. Now, sir, it is admitted that the 5th district was carried by fraud, and that it is a Free State district. In the 13th district, the judges were driven from the polls, and took their poll-books and papers with them, and left. Now, these districts, in which the fraud and violence is either admitted or is palpable, elect a majority of both Houses. I have here a table showing the arrangement of these districts:

COUNCILMEN.		REPRESENTATIVES.
1st dist. }	2	1st dist. 3
4th " }	2	2d " 2
5th " }	2	3d " 1
2d " }	1	5th " 4
3d " }	1	7th " }
7th " }	1	8th " }
8th " }	1	11th " }
13th " }	2	12th " }
16th " }	2	13th " 1
—	8	16th " 3
		16

The number of Councilmen was 13.

The number of House was 26.

In addition to these, one Free State Councilman, M. F. Conway, was elected in the 6th Council district, and one Free State Representative, S. D. Houston, was elected in the 8th Representative district, composed of the 9th and 10th election districts. In all these districts, the Free State majority was beyond all reasonable dispute, except in the 13th and 16th districts. Even excluding these, the House would have been a tie, and the Council one Free State majority.

Mr. STEPHENS. In the 16th election district, in which the election was set aside by Governor Reeder, the second election went just as the first one did, and Governor Reeder commissioned the same men.

Mr. SHERMAN. The testimony will show that this second election in the 16th district was the only one which was not fair.

Mr. STEPHENS. I say that the testimony shows that it was perfectly fair, that it was considered to be fair, and there was no protest against it by the Free State party.

Mr. PHELPS. I desire to make a statement.

Mr. SHERMAN. If I submit to every interruption, it will occupy all my time. If gentlemen will extend it as much as they use it, they may interrupt me as much as they please.

In answer to these assertions, I state that the

testimony is as conclusive as any testimony can be, that at the election on the 22d of May, to fill the vacancy, several hundred residents of Missouri went over to that election, and voted there.

Mr. STEPHENS. If there is a particle of proof that over fifty Missourians went over, I desire to see it.

Mr. SHERMAN. In regard to the action of the Governor, referred to by the gentleman a few moments since, I may here say, that it resulted in nothing, because the same motives which induced the invasion, caused the alleged Legislature to, and it did, set aside his official certificates, upon which the gentleman now relies.

While my colleague, by general statements, disputes the conclusions of the report, he does not controvert any distinct fact or allegation contained in it. The report gives facts, and sustains them by names, dates, and references. They are given in such detail, that, if not sustained by the proof, it could be readily noticed. Yet, no distinct fact alleged in the report is disputed, and my colleague contents himself with a general denial, and in this way endeavors to overthrow the sworn testimony of hundreds of witnesses, many of whom are his own friends and constituents. Thus, while admitting "that a large number of Missourians went over to the Territory on the day of election," he says that they went merely to prevent illegal voting by Eastern emigrants; but he says that only a few, whose names are given, are proven to have voted; and not as many, in all, as there were Eastern emigrants who voted illegally at Lawrence. And yet the proof is conclusive, that no Eastern emigrants voted except at Lawrence; and of these, not over fifty illegally, and these fifty were *bona fide* settlers in the Territory, but had not selected their claims. And it is as conclusively proven as any such fact can be, that 4,903 residents of Missouri, who came in armed and organized bands, with cannon, flags, guns, and all the paraphernalia of war, voted, and their names are found in the poll-books. No doubt, many more came, who, like my colleague, did not vote. If my colleague's assertion is true, I would like to know how he will answer these questions.

How came there to be 6,300 votes cast, when there were but 2,900 legal voters in the Territory, and, of these, less than one half voted?

If the Missourians only went to prevent the Eastern emigrants from voting, why did they go into every Council district, and every Representative district but one, when it is admitted that all these emigrants were at Lawrence?

Why did they marshal 5,000 armed men, merely to prevent the white males among 500 emigrants from voting? for the extent of the entire Eastern and Northern emigration, that spring, is shown by them to be 500, including women and children.

Sir, it is idle to dispute the facts in this case. I have been astonished that gentlemen, in the face of testimony that would convict of crime in any court, will still deny or evade. They may excuse and palliate, they may talk about Emigrant Aid Societies, and Congressional interference, and all circumstances of mitigation which ingenuity can devise, but it is too late for denial—the glaring facts stand out, proven by

testimony beyond reasonable doubt, that at the first Legislative election, the first and the only opportunity of the people of that Territory to exercise the political power given to them, they were controlled by non-residents.

Why, then, will gentlemen still talk to us about popular sovereignty, and appeal to us to leave the people of the Territory to settle the question of Slavery for themselves. Why, sir, ever since this controversy was reopened by the repeal of the Missouri Compromise, the settlers have only asked that poor boon. They have again and again, and now appeal to you for protection against non-residents, and you deny the power of Congress to even consider their complaints. You refer them to the President and the Judiciary; and yet, the other day, you refused to direct the President to take the only steps by which he can protect them in their rights. The gentleman from Georgia, turning to me, says that in the amendment to the Army bill, offered by me and adopted by the House, we gave the President extraordinary powers. Why, sir, he has already exercised all the powers given by that amendment, but not for the peaceful purpose there stated. Instead of preserving the peace and preventing the commission of crimes disgraceful to the age, he has taken sides with the invading party, and has caused the arms of the United States to be distributed among mere partisans, to be used for purposes of oppression. The House only declares that the army and military stores shall not be used in that way, and I trust it will adhere to that position.

Sir, while I would take nothing from the constitutional powers of the President, I would add nothing to them. Look at his action heretofore! Read the testimony of Governor Reeder, when he came to Washington, and fully detailed all the incidents of the 30th of March! Think how the rights of that infant settlement were talked over—chaffered with—bartered! How a mission to China, or another trust of equal profit and importance, was discussed, as a means to induce a resignation by Reeder! This interview between the Governor and the President presents a painful scene, upon which I do not wish to comment. Contrast the conduct of the President with the Shawnee Mission Legislature and the Topeka Legislature—the one elected by the means I have stated, and of which he was fully informed by Reeder—the other a movement of citizens, and *none but citizens*, of the Territory, to avoid the evils of a base submission to wrong on the one hand, and anarchy on the other. The one is recognised—paid out of the national Treasury—and sanctioned and sustained by the military force; the other is dispersed by this same force, and its members harassed by groundless prosecutions. Sir, with all respect to the President, as a man, I must condemn his conduct in this struggle between the citizens of Missouri and Kansas, as a mixture of weakness, indecision, and wrong, unworthy his high position. He not only refused to protect the citizens of Kansas from invasion, but now, with the facts fully proven, he insists upon enforcing the enactments of a Legislative Assembly imposed by it; and, more than all, he sustains a Judiciary that has allowed all its powers to be perverted to sustain oppres-

sion and wrong. Judge Lecompte holds the office of Chief Justice at the pleasure of the President; and yet, in May, 1855, this man attends a bitterly partisan meeting, addresses it, and sustains resolutions which look to and lead to unlawful violence, suppress the liberty of speech, and prejudge the very question which we are now told should be left to his judgment. He so administers the criminal law, that no crime is punished, if it be committed by a Pro-Slavery man—that arson, robbery, and murder, are done, and sanctioned by his officers, without fear of punishment. He allows indictments against houses, printing presses, and bridges, to be found in his court; and then, without notice to the owners, or trial of any kind, allows the property to be destroyed by a mob, marshalled under his officers. To facilitate this kind of law and justice, and enable his officers to be present, he adjourns his court. He revives the doctrine of constructive treason, and under such charges allows leading citizens of the Territory to be arrested and detained in custody, and refuses the prisoners the privilege of bail. They are charged with treason! Treason against what? Surely not against the Kansas-Nebraska bill. Since the passage of that law, no man gainsays its force. Each of these prisoners is willing to leave the question to the people, undeterred by non-residents.

Mr. STEPHENS. I would ask the gentleman whether he is willing to leave the question to the people of the Territory to settle?

Mr. SHERMAN. I will answer that at some other time—I do not choose to be interrupted. To do so, would draw me from my present purpose, which is to show that the Judiciary, as a remedy, is utterly futile. Here is a certified copy of the indictment, charging with treason men who are now held in ignominious servitude, while we are passing our days in trying the validity of the Legislative Assembly whose acts they are charged with resisting. The crime alleged against them is, that they will not consent that a Government of force and fraud shall be substituted for that which you provided for them. The indictment does not, on its face, allege a case of treason; and, besides, it alleges facts which everybody knows are utterly untrue. The overt act (as lawyers call it) is laid on the 20th of May—the day before Lawrence was sacked. On that day, sir, Charles Robinson was in the custody of armed men in Missouri. He was stopped without warrant, while passing with his wife on a national highway, and detained until this indictment was found. No overt act, within the meaning of the Constitution, is alleged. All the others who are named in this indictment, but one, were absent from the Territory at the time when the treason is charged to have been committed.

Sir, there is no remedy for these wrongs, unless Congress administers it. It opened this

“Direful spring
Of woes unnumbered,”

by the repeal of this Missouri Compromise. It is the governing power, and must take the responsibility. If we cannot agree upon the only true and radical remedy—the restoration of the Missouri restriction—let us, at least, prevent a civil war; let us withdraw the arms of the United States from excited men; let us suspend the execution of laws whose validity is denied; let us stop the hounds of Judge Lecompte, lest our country be disgraced by another “Campaign in the West,” so infamous in English history; and beware lest a repetition of that historical crime shall bring again the fate of James II and of Jeffries. Take from him the power to punish honest men for fictitious crimes.

I trust that every representative of the people of the United States is willing to put a stop to these evils. To do this, three things must be done. The sitting Delegate has no just right here. Although I entertain feelings of much kindness for him, personally, yet I shall vote for his exclusion, because he is the representative here of the force and fraud which carried the election on the 30th of March. In the next place, the pretended laws of Kansas ought to be declared null and void, or repealed. And then the militia of that Territory ought to be disarmed, and the whole force of the Government should be used, if necessary, to keep the peace. For God’s sake, keep the peace! I would, if it were possible, tie down every citizen of the Territory to his home, and protect him from invasion and judicial oppression. The worst evil that could befall our country is civil war; but the outrages in Kansas cannot be continued much longer without producing it. To our Southern brethren, I especially appeal. In the name of Southern rights, crimes have been committed, and are being committed, which I know you cannot and do not approve. These have excited a feeling in the Northern States that is deepening and strengthening daily. It may produce acts of retaliation. You are in a minority, and, from the nature of your institutions, your relative power is yearly decreasing. In excusing this invasion from Missouri—in attempting to hold on to an advantage obtained by force and fraud—you are setting an example which, in its ultimate consequences, may trample your rights under foot. Until these wrongs are righted, you must expect Northern men to unite to redress them. It may not be this year, but, as sure as there is a God in heaven, such a union will be effected; and you will gain nothing by sustaining Northern agitators in violating the compromises of your fathers.

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